

# **EXHIBIT K**

## INTER PARTES REEXAMINATION TIME LINE (USE WITH MPEP FLOWCHART)

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
1.	Request for Reexamination filed	37 CFR § 1.913	
2.	Reexamination ordered and Initial Office action issued	37 CFR § 1.931 (Order for <i>inter partes</i> reexamination.) 37 CFR § 1.935 (Initial Office Action may accompany the order for <i>inter partes</i> reexamination.)	Issuance of initial Office action ranges from 0 to 2.1 years after Reexamination Order entered
3.	Patent Owner Response	37 CFR § 1.945	1 to 2 months from date of Office Action
4.	3rd Party requester comments	37 CFR § 1.947	30 days from date of service of patent owner response
5.	Office Action issued	37 CFR § 1.949	ranges from 0.4 to 5.2 years
6.	[if Office Action closes prosecution –] Patent Owner submits comments/amendments in response to Action closing prosecution AND/OR Patent Owner files a Rule 1.181 petition	37 CFR § 1.951 Options after Office action closing prosecution in <i>inter partes</i> reexamination. (a) After an Office action closing prosecution in an <i>inter partes</i> reexamination, the patent owner may once file comments limited to the issues raised in the Office action closing prosecution. The comments can include a proposed amendment to the claims, which amendment will be subject to the criteria of § 1.116 as to whether or not it shall be admitted. The comments must be filed within the time set for response in the Office action closing prosecution.  <b>MPEP § 2672.VI. ACTION CLOSING PROSECUTION – PREMATURE</b> If the patent owner is of the opinion that the Office action closing prosecution in the <i>inter partes</i> reexamination proceeding is premature,	Action closing prosecution (ACP) sets time for response (typically 30 days or 1 month, whichever is longer)  Petition that ACP is premature: file within time set for response to ACP.

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		<p>the patent owner may, in addition to the comments submitted under 37 CFR 1.951(a), file a petition under 37 CFR 1.181 within the time period for filing the comments under 37 CFR 1.951(a).</p> <p><b>MPEP § 2672.III. ACTION TAKEN BY EXAMINER</b></p> <p>It should be kept in mind that a patent owner cannot, as a matter of right, amend claims rejected in the ACP, add new claims after an ACP, nor reinstate previously canceled claims. A showing under 37 CFR 1.116(b) is required and will be evaluated by the examiner for all proposed amendments after the ACP, except where an amendment merely cancels claims, adopts examiner's suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner.</p>	
7.	3rd Party Responding comments AND/OR response to Patent Owner's Rule 1.181 petition	<p><b>37 CFR § 1.951</b></p> <p>(b) When the patent owner does file comments, a third party requester may once file comments responsive to the patent owner's comments within 30 days from the date of service of patent owner's comments on the third party requester.</p> <p><b>MPEP§ 2672.VI. ACTION CLOSING PROSECUTION - PREMATURE</b></p> <p>The third party requester may then once file, as a paper separate from any submission under 37 CFR 1.951(b), comments responsive to the patent owner's petition under 37 CFR 1.181 within 30 days from the date of service of the patent owner's petition under 37 CFR 1.181 on the third party requester.</p>	30 days from date of service of patent owner response
8.	Examiner considers comments. Examiner may then issue a Right of Appeal Notice. OR Examiner may reopen	<p><b>§ 1.953 Examiner's Right of Appeal Notice in <i>inter partes</i> reexamination.</b></p> <p>(a) Upon considering the comments of the patent owner and the third party requester subsequent to the Office action closing prosecution in an <i>inter partes</i> reexamination, or upon expiration of the time for submitting such comments, the examiner shall issue a Right of Appeal Notice, unless the examiner reopens prosecution and issues another</p>	ranges from 1.9 months to 2.8 years

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
	prosecution.	Office action on the merits.  (b) Expedited Right of Appeal Notice: At any time after the patent owner's response to the initial Office action on the merits in an <i>inter partes</i> reexamination, the patent owner and all third party requesters may stipulate that the issues are appropriate for a final action, which would include a final rejection and/or a final determination favorable to patentability, and may request the issuance of a Right of Appeal Notice. The request must have the concurrence of the patent owner and all third party requesters present in the proceeding and must identify all of the appealable issues and the positions of the patent owner and all third party requesters on those issues. If the examiner determines that no other issues are present or should be raised, a Right of Appeal Notice limited to the identified issues shall be issued.	
9.	[if Examiner does not reopen prosecution –] Examiner issues Right of Appeal Notice (Final Office action)	<b>37 CFR § 1.953 (c)</b> The Right of Appeal Notice shall be a final action, which comprises a final rejection setting forth each ground of rejection and/or final decision favorable to patentability including each determination not to make a proposed rejection, an identification of the status of each claim, and the reasons for decisions favorable to patentability and/or the grounds of rejection for each claim. No amendment can be made in response to the Right of Appeal Notice. The Right of Appeal Notice shall set a one-month time period for either party to appeal. If no notice of appeal is filed, prosecution in the <i>inter partes</i> reexamination proceeding will be terminated, and the Director will proceed to issue and publish a certificate under §1.997 in accordance with the Right of Appeal Notice.	ranges from 1.9 months to 2.8 years
10.	Either or both parties may file a Notice of Appeal	<b>37 CFR § 41.61 Notice of appeal and cross appeal to Board.</b> <b>(a)(1)</b> Upon the issuance of a Right of Appeal Notice under § 1.953 of this title, the owner may appeal to the Board with respect to the final rejection of any claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 41.20(b)(1).	within 1 month from Right of Appeal Notice

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		(a)(2) Upon the issuance of a Right of Appeal Notice under § 1.953 of this title, the requester may appeal to the Board with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal.	
11.	If a party does not file a notice of appeal and his/her opponent does, the party may file a Notice of Cross Appeal	<p><b>37 CFR § 41.61</b></p> <p>(b)(1) Within fourteen days of service of a requester's notice of appeal under paragraph (a)(2) of this section and upon payment of the fee set forth in § 41.20(b)(1), an owner who has not filed a notice of appeal may file a notice of cross appeal with respect to the final rejection of any claim of the patent.</p> <p>(b)(2) Within fourteen days of service of an owner's notice of appeal under paragraph (a)(1) of this section and upon payment of the fee set forth in § 41.20(b)(1), a requester who has not filed a notice of appeal may file a notice of cross appeal with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent.</p>	14 days after service of opponent's Notice of Appeal
		<p><b>MPEP § 2674.</b> Where a notice of appeal or notice of cross appeal is timely filed but is defective, e.g., missing fee or missing portion of the fee, no proof of service is included, it is signed by an inappropriate party or is unsigned, failure to identify the appealed claims; 37 CFR 41.61(f) provides the appropriate party one opportunity to file, within a nonextendable period of one month, an amended notice of appeal or cross appeal that corrects the defect(s).</p>	1 month to cure defects in timely-filed Notice of Appeal
12.	Appeal Brief / Cross-Appeal Brief	<p><b>37 CFR § 41.66. Time for filing briefs.</b></p> <p>(a) An appellant's brief must be filed no later than two months from the latest filing date of the last-filed notice of appeal or cross appeal or, if any party to the proceeding is entitled to file an appeal or cross appeal but fails to timely do so, no later than two months from the</p>	2 months from last-filed notice of appeal or cross appeal

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		expiration of the time for filing (by the last party entitled to do so) such notice of appeal or cross appeal. The time for filing an appellant's brief or an amended appellant's brief may not be extended.	
13.	Reply Brief	37 CFR § 41.66(b). Once an appellant's brief has been properly filed, any brief must be filed by respondent within one month from the date of service of the appellant's brief. The time for filing a respondent's brief or an amended respondent's brief may not be extended.	due 1 month from service of Appeal Brief
14.	Examiner's Answer	37 CFR § 41.66(c). The examiner will consider both the appellant's and respondent's briefs and may prepare an examiner's answer under § 41.69.	typically one to three months after receipt of respondent's brief
15.	[if Examiner does not change position on any rejection –] Either or both parties can file Rebuttal Brief	37 CFR § 41.66(d). Any appellant may file a rebuttal brief under § 41.71 within one month of the date of the examiner's answer. The time for filing a rebuttal brief or an amended rebuttal brief may not be extended.	within 1 month after date of Examiner's Answer
	Request for Oral Hearing (not shown in flow chart)	37 CFR § 41.73(b). If an appellant or respondent desires an oral hearing, he or she must file, as a separate paper captioned 'REQUEST FOR ORAL HEARING,' a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months after the date of the examiner's answer.	within 2 months after the date of Examiner's Answer
	Oral Hearing Before BPAI (not shown in flow chart)		within 6-12 months after filing of request for oral hearing.
16.	Board Decision The PTO's Board of Patent Appeals and Interferences (BPAI) may: (1) affirm the Examiner's	37 CFR § 41.77 Decisions and other actions by the Board. (a) The Board of Patent Appeals and Interferences, in its decision, may affirm or reverse each decision of the examiner on all issues raised on each appealed claim, or remand the reexamination proceeding to the examiner for further consideration. The reversal of the examiner's determination not to make a rejection proposed by the third party	ranges from 2.3 - 3.6 years after issuance of Right of Appeal Notice

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
	<p>decision</p> <p>(2) reverse the Examiner's decision</p> <p>(3) remand the proceeding to Examiner for further consideration</p> <p>(4) provide a new ground of rejection</p>	<p>requester constitutes a decision adverse to the patentability of the claims which are subject to that proposed rejection which will be set forth in the decision of the Board of Patent Appeals and Interferences as a new ground of rejection under paragraph (b) of this section. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.</p> <p>(b) Should the Board reverse the examiner's determination not to make a rejection proposed by a requester, the Board shall set forth in the opinion in support of its decision a new ground of rejection; or should the Board have knowledge of any grounds not raised in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, which statement shall constitute a new ground of rejection of the claim. <b>Any decision which includes a new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.</b></p>	
17.	<p><i>[If either party appeals to Fed Cir.—]</i></p> <p>Fed. Cir. appeal process</p>	<p><b>35 U.S.C. §§ 141-145.</b></p> <p><b>35 U.S.C. §§ 141-142.</b> When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the Director, within such time after the date of the decision from which the appeal is taken as the Director prescribes, but in no case less than 60 days after that date.</p>	60 days after Board decision
	Fed. Cir. sets schedule for briefing and argument (not shown in flow chart)		
	Fed. Cir. decision (not shown in flow chart)		Median is 9.9 months from docketing date to disposition date.



	Step in <i>Inter Partes</i> Reexam Flow Chart	Relevant Statute or Rules	Time Period
			See Ex. C.
18.	[If Board decision is <i>not final</i> for judicial review—] Patent Owner amendment and/or showing of new evidence	<p>37 CFR § 41.77(b) ... When the Board makes a new ground of rejection, the owner, within one month from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal proceeding as to the rejected claim:</p> <p>(1) <i>Reopen prosecution</i>. The owner may file a response requesting reopening of prosecution before the examiner. Such a response must be either an amendment of the claims so rejected or new evidence relating to the claims so rejected, or both.</p> <p>(2) Request rehearing. See below.</p>	within 1 month of Board Decision
19.	3 <sup>rd</sup> Party Requester comments	<p>37 CFR § 41.77(c). Where the owner has filed a response requesting reopening of prosecution under paragraph (b)(1) of this section, any requester, within one month of the date of service of the owner's response, may once file comments on the response. Such written comments must be limited to the issues raised by the Board's opinion reflecting its decision and the owner's response. Any requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under § 41.20 (b)(1) and (2), respectively, which must accompany the comments or reply.</p>	within 1 month of service of patent owner's response
20.	Examiner's Determination	<p>37 CFR § 41.77(d). Following any response by the owner under paragraph (b)(1) of this section and any written comments from a requester under paragraph (c) of this section, the proceeding will be remanded to the examiner. The statement of the Board shall be binding upon the examiner unless an amendment or new evidence not previously of record is made which, in the opinion of the examiner, overcomes the new ground of rejection stated in the decision. The examiner will consider any owner response under paragraph (b)(1) of this section and any written comments by a requester under paragraph (c) of this section and issue a determination that the rejection is maintained or has been overcome.</p>	indeterminate (no <i>inter partes</i> reexamination has progressed this far)



	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
21.	Either party comments & the other party replies	37 CFR § 41.77(e). Within one month of the examiner's determination pursuant to paragraph (d) of this section, the owner or any requester may once submit comments in response to the examiner's determination. Within one month of the date of service of comments in response to the examiner's determination, the owner and any requesters may file a reply to the comments. No requester reply may address the comments of any other requester reply. Any requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under § 41.20(b)(1) and (2), respectively, which must accompany the comments or reply.	comments within 1 month of examiner's determination; <i>plus</i> reply within 1 month of comments
22.	Reexamination proceeding returned to Board for Board Decision	37 CFR § 41.77(f). After submission of any comments and any reply pursuant to paragraph (e) of this section, or after time has expired, the proceeding will be returned to the Board which shall reconsider the matter and issue a new decision. The new decision is deemed to incorporate the earlier decision, except for those portions specifically withdrawn.	returned to Board upon comments and reply, or after expiration of 1-2 months
	[Loop back to Step (16) Board Decision above ]	37 CFR §§ 41.77(a), 41.77(b).	see time periods above for BPAI review
23.	[Alternative option after any Board Decision –] Patent Owner and/or 3 <sup>rd</sup> Party Requester Request for Rehearing	37 CFR § 41.79 Rehearing. (a) Parties to the appeal may file a request for rehearing of the decision within one month of the date of: (1) The original decision of the Board under § 41.77(a), (2) The original § 41.77(b) decision under the provisions of § 41.77(b)(2), (3) The expiration of the time for the owner to take action under § 41.77(b)(2), or (4) The new decision of the Board under § 41.77(f).	within 1 month of Board Decision

24.	Opposing Party's Comments	<p><b>37 CFR § 41.79(c)</b> Within one month of the date of service of any request for rehearing under paragraph (a) of this section, or any further request for rehearing under paragraph (d) of this section, the owner and all requesters may once file comments in opposition to the request for rehearing or the further request for rehearing. The comments in opposition must be limited to the issues raised in the request for rehearing or the further request for rehearing.</p> <p><b>(e)</b> The times for requesting rehearing under paragraph (a) of this section, for requesting further rehearing under paragraph (c) of this section, and for submitting comments under paragraph (b) of this section may not be extended.</p>	within 1 month of Request for Rehearing
25.	Board Decision	<p><b>37 CFR § 41.79(d)</b> If a party to an appeal files a request for rehearing under paragraph (a) of this section, or a further request for rehearing under this section, the Board shall render a decision on the request for rehearing. The decision on the request for rehearing is deemed to incorporate the earlier opinion reflecting its decision for appeal, except for those portions specifically withdrawn on rehearing and is final for the purpose of judicial review, except when noted otherwise in the decision on rehearing.</p>	indeterminate (no <i>inter partes</i> reexamination has progressed this far)
26.	<p><i>[If Board's decision on rehearing is not a new decision –]</i> Appeal to Fed. Cir.</p> <p><i>[If Board's decision on rehearing becomes a new decision, loop back to Step (23) Request for Rehearing]</i></p>	<p><b>37 § 41.79(d)</b> ... If the Board opinion reflecting its decision on rehearing becomes, in effect, a new decision, and the Board so indicates, then any party to the appeal may, within one month of the new decision, file a further request for rehearing of the new decision under this subsection. Such further request for rehearing must comply with paragraph (b) of this section.</p>	see time periods set forth above for rehearing and/or Fed. Cir. appeal